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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL EUGENE WYATT,
Petitioner,
v.
JOHN SUTTON,
Respondent.

Case No. 18-cv-06588-PJH

**ORDER DENYING MOTION FOR A
STAY WITH LEAVE TO AMEND**

Re: Dkt. No. 29

Petitioner, a California prisoner, proceeds with a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The first two petitions were dismissed with leave to amend because it was not entirely clear the claims petitioner had presented. Liberally construing the second amended petition, petitioner asserted that: (1) the trial court erred by failing to instruct the jury on self-defense and imperfect self-defense; (2) there was insufficient evidence of premeditation and deliberation for first degree murder; and (3) ineffective assistance of counsel for failing to object to improper jury instructions and failing to present a claim of self-defense. The court found that those claims were sufficient to require a response and issued an order to show cause. The court noted that if those were not the claims petitioner wished to proceed with, he must inform the court within fourteen-days. Petitioner submitted several filings and indicated he wished to move forward with the order to show cause. Docket No. 24 at 2; Docket No. 26 at 1.

Petitioner has now filed a motion requesting a stay to exhaust a claim regarding self-defense jury instructions. He argues he has shown good cause. In *Rhines v. Weber*, 544 U.S. 269 (2005) the United States Supreme Court found that a stay and abeyance of a mixed federal petition should be available only in the limited circumstance

1 that good cause is shown for a failure to have first exhausted the claims in state court,
2 that the claim or claims at issue potentially have merit and that there has been no
3 indication that petitioner has been intentionally dilatory in pursuing the litigation. *Rhines*,
4 *supra*, at 277-78.

5 While petitioner states he has shown good cause he has not presented any
6 arguments for good cause about why he failed to exhaust the claim. It is also not clear if
7 this is a new claim or a claim already identified by the court that is unexhausted. The
8 motion for a stay (Docket No. 29) is **DENIED** without prejudice. Petitioner must file an
9 amended motion for a stay by **April 22, 2019**. Petitioner must present arguments in
10 support of good cause for a *Rhines* stay and he must describe if this is a new claim or
11 one of the existing claims.

12 **IT IS SO ORDERED.**

13 Dated: April 1, 2019



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PHYLLIS J. HAMILTON
United States District Judge

MICHAEL EUGENE WYATT,
Plaintiff,
v.
JOHN SUTTON,
Defendant.

Case No. 18-cv-06588-PJH

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 1, 2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michael Eugene Wyatt ID: AW6376
Wasco State Prison
101 Scofield Avenue
P.O. Box 8800
Wasco, CA 93280

Dated: April 1, 2019

Susan Y. Soong
Clerk, United States District Court

By: Kelly Collins
Kelly Collins, Deputy Clerk to the
Honorable PHYLLIS J. HAMILTON